# **Climate “refugees”? Responding to displacement caused by climate change and natural disasters**

**Law 288.43 – Spring 2024**

**Instructor Name:** [Kate Jastram](https://www.law.berkeley.edu/our-faculty/faculty-profiles/kate-jastram/#tab_profile) (she/her), Christopher Edley, Jr. Lecturer at Berkeley Law

**Instructor Information:** The instructor is Sérgio Vieira de Mello Professor of International Refugee Law at the University of California College of the Law, San Francisco (UCLSF), and serves as director of policy and advocacy at UCLSF’s Center for Gender & Refugee Studies. She has worked for the Office of the United Nations High Commissioner for Refugees and for the Department of Homeland Security, and was an expert consultant on asylum for the U.S. Commission on International Religious Freedom. Her most recent article is [*Climate Change and Cross-Border Displacement: What the Courts, the Administration, and Congress Can Do to Improve Options for the United States*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4593679)*,* forthcoming 56 Case Western Reserve Journal of International Law (2024). She is a member of the editorial board of the International Journal of Refugee Law and serves on the executive committee of the American Society of International Law’s International Refugee Law Interest Group.

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**Office Hours:** Thursdays 2:30-3:20 in person at Café Zeb, or by phone/Zoom at your convenience

**Course Information**

**Meetings:** Thursdays 3:35pm-5:25pm, January 11 to February 22, 2024 inclusive

**Location:** Law 12

**Units:** 1 **Prerequisites or Co-requisites:** None.

## Textbook/Course Materials: I will post all the readings or links on bCourses

## bCourses: Our class site is <https://bcourses.berkeley.edu/courses/1531007>

## Course Description

As climate change becomes more apparent each day, there is growing awareness that many people must flee their homes and in some cases their countries as a result. This results in a legal gap, as people displaced across borders by climate change or natural disasters are not generally considered to be refugees under international law. At the same time, people who do fit that definition are increasingly unwelcome, with many developed countries in particular seeking to evade their treaty obligations to refugees. How can we reconcile a retreat from protection with a growing need for international solutions?

This class will explore efforts to date to address cross-border climate-related displacement drawing on international and U.S. law. We will examine the rationale for having an asylum system in the first place, as well as its critiques: who benefits, who is left out, and why? We will explore international and Inter-American human rights law efforts to encompass climate displacement. We will then look at how human mobility is addressed in the context of climate change law. After this grounding in the international law framework, we’ll turn to the United States and assess litigation, legislation, and administrative measures both here and in the Americas that could position the United States to step up to this challenge. There are no prerequisites for this course, and it is open to 1Ls. It is an excellent introduction to the law, policy, and politics of a critical humanitarian and national security issue.

## Learning Outcomes

Students in the course will be expected to achieve the following Berkeley Law Learning Outcomes:

* Knowledge and understanding of substantive and procedural law;
* Legal analysis and reasoning, problem-solving, and written and oral communication in the legal context; and
* Using the law to solve real-world problems and to create a more just society.

## Course-Specific Learning Outcomes

By the end of this course, students should be able to:

* Describe the international law framework for sovereignty and citizenship, and explain why “refugees” are an exception to general rules of sovereignty
* Explain arguments/actions to expand notions of sovereignty and to restrict it against even refugees
* Identify and discuss issues of race and gender in climate displacement
* Apply the international/U.S. refugee definition to various fact patterns related to climate displacement
* Describe at least two ways U.S. asylum law or border procedures have changed under the current administration
* Summarize the legal basis for refugee protection under U.S. law, identify the agencies and describe the procedures involved
* Describe and critique at least two international or regional legal theories for protecting people displaced by climate change
* Explain why Afghans, Ukrainians, Cubans, Haitians, Nicaraguans, and Venezuelans had or have special programs for entry known as humanitarian parole – are climate factors explicitly or implicitly a reason?
* Provide at least one argument for and one against these special humanitarian parole programs
* Justify either excluding one of the countries on the humanitarian parole list, or adding another country to it
* Analyze challenges facing attorneys in the U.S. refugee protection system
* Assess the strengths and weaknesses of litigation, legislation, administrative rulemaking, and public education as tools for influencing climate displacement law or policy

## Assignments

I will assign two short papers (a maximum of two pages double-spaced, or 500 words) that will ask you to reflect on or respond to course readings, guest speakers, and/or material covered in class. I will return each paper to you with comments. The first paper will be due Thursday 1 February (the middle of our class sessions); the second will be due Thursday 22 February (the end of our class sessions). Specific prompts for each paper will be posted on bCourses.

## Grading/Evaluation

This is a credit/no credit course. There is no final exam of any type in this class, and therefore no review session.

**Thursday 11 January 2024: CLASS #1**

**Global refugee trends; international law framework: sovereignty, citizenship, and refugees; migration as decolonization, but the end of territorial asylum?**

Reading and other assignments:

* Watch UNHCR video (6:33), [*Global Trends Report: 110 Million Displaced*](https://www.youtube.com/watch?v=UUlfCKoPe68)(15 June 2023).
* Tendayi Achiume, [*Migration as Decolonization*,](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3330353) 71 Stanford Law Review 1509 (2019).
  + Read the Abstract, pp. 1509-10 and “Part I: The Territorial Sovereign Nation-State and Its Right to Exclude Political Strangers,” pp. 1523-33. (11 pages)
  + Note that Achiume is not writing about refugees (“political strangers”) but this is useful framing for us and an initial critique regarding international law’s approach to sovereignty and borders. You can disregard the footnotes in the section assigned, except for 48 and 49.
* Carmen Gonzalez, [*Climate Change, Race, and Migration*,](https://www.researchgate.net/publication/344851133_Climate_Change_Race_and_Migration_1_Journal_of_Law_and_Political_Economy_109-146_2020) 1 Journal of Law and Political Economy 109 (2020).
  + Read the Abstract and “Part I. Introduction,” pp. 109-111 and “Part IV. Climate Change and the Plight of Climate-Displaced Persons,” pp. 118-127. (11 pages)
* Miriam Jordan, *African Migration to the U.S. Soars as Europe Cracks Down*, New York Times, Jan. 5, 2024. (4 pp)
  + This Word document on bCourses includes Discussion Questions for Class #1.
* Read Discussion Questions for Class #1 (included in Miriam Jordan piece posted on bCourses)
* Fill out Student Questionnaire (if I can figure out how to post it, otherwise we’ll do it in class)

OPTIONAL \*\* OPTIONAL \*\* OPTIONAL ADDITIONAL READING

* James Souter, [*Towards a Theory of Asylum as Reparation for Past Injustice*,](https://journals.sagepub.com/doi/10.1111/1467-9248.12019)62 Political Studies 326 (2014) (17 pp)
* David Cantor et al., [*Externalisation, Access to Territorial Asylum, and International Law,*](https://academic.oup.com/ijrl/article/34/1/120/6619241) 34 International Journal of Refugee Law 120 (June 2022). (36 pp)

Relevant learning outcomes (from list of course-specific learning outcomes above):

* Describe the international law framework for sovereignty and citizenship and explain why “refugees” are an exception to general rules of sovereignty.
* Explain arguments/actions to expand notions of sovereignty and to restrict it against even refugees.

**Thursday 18 January: CLASS #2**

**Displacement related to climate change and disasters: who, why, and where? International and regional responses**

Reading to be assigned

Relevant learning outcomes (from list of course-specific learning outcomes above):

* Explain at least two international or regional initiatives to respond to climate displacement
* Identify and discuss issues of race and gender in climate displacement

**Thursday 25 January: CLASS #3**

**The refugee definition in practice: where do climate displaced people fit? Structures of U.S. protection: agency roles and responsibilities, and how to develop the law**

Reading to be assigned

Relevant learning outcomes (from list of course-specific learning outcomes above):

* Apply the international/U.S. refugee definition to various fact patterns related to climate displacement.
* Describe at least two ways U.S. asylum law or border procedures have changed under the current administration.
* Summarize the legal basis for refugee protection under U.S. law, identify the agencies and describe the procedures involved.

**Thursday 1 February: CLASS #4**

**Expanding the refugee definition: The Cartagena Declaration, the role of human rights law, the law of climate change, and Temporary Protected Status**

First reflection paper due

Reading to be assigned

Relevant learning outcomes (from list of course-specific learning outcomes above):

* Describe and critique at least two international or regional legal theories for protecting people displaced by climate change

**Thursday 8 February: CLASS #5**

**Extraterritorial discretionary pathways: the wave of the future? Refugee resettlement, humanitarian parole, family reunification, labor migration and Safe Mobility Offices**

Reading to be assigned

Relevant learning outcomes (from list of course-specific learning outcomes above):

* Explain why Afghans, Ukrainians, Cubans, Haitians, Nicaraguans, and Venezuelans had or have special programs for entry known as humanitarian parole – are climate factors explicitly or implicitly a reason?
* Provide at least one argument for and one against these special humanitarian parole programs
* Justify either excluding one of the countries on this list, or adding another country

**Thursday 15 February: CLASS #6**

**The role of the attorney**

Reading to be assigned

Relevant learning outcomes (from list of course-specific learning outcomes above):

* Analyze challenges facing attorneys in the U.S. refugee protection system.

**Thursday 22 February: CLASS #7**

**The way forward: litigation, legislation, administrative rulemaking, public education and awareness**

Final reflection paper due

Reading to be assigned

Relevant learning outcomes (from list of course-specific learning outcomes above):

* Assess the strengths and weaknesses of litigation, legislation, administrative rulemaking, and public education as tools for influencing climate displacement law or policy